

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH SCOTT SHERRILL and
KEITH A. SIVERLY, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

Case No. 04-72949

FEDERAL-MOGUL CORPORATION
RETIREMENT PROGRAMS COMMITTEE;
JAMES ZAMOYSKI; RICHARD P.
RANDAZZO; RICHARD B. STEWART;
JOSEPH BREITENBECK; DAVID A.
BOZINSKY; RICHARD A. SNELL;
THOMAS W. RYAN; THOMAS P. MARTIN;
G. MICHAEL LYNCH; CHARLES G.
MCCLURE; FRANK E. MACHER; JOHN
J. FANNON; ROBERT S. MILLER, JR.;
RODERICK M. HILLS; GEOFFREY H.
WHALEN; JOHN DOES 1 TO 25; FEDERAL-
MOGUL CORPORATION SALARIED
EMPLOYEES' INVESTMENT PROGRAM;
COMERICA BANK; and STATE STREET
BANK AND TRUST COMPANY,

HONORABLE AVERN COHN

Defendants.

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ORDER DENYING THE COMMITTEE DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT WITHOUT PREJUDICE

This is a case under the Employment Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq., claiming breach of fiduciary duty. The Committee Defendants have filed a Motion for Partial Summary Judgment. The motion is DENIED WITHOUT PREJUDICE to the refiling after the decision on Comerica's Motion for Summary Judgment, provided it is accompanied by a manageable Statement of Material Facts

Not in Dispute.

Initially, the Committee Defendants filed a Statement of Material Facts Not in Dispute of 100 paragraphs. Plaintiffs' response did not conform to the Court's motion practice guidelines. Rather, plaintiffs filed a Counterstatement of Disputed Facts of 121 paragraphs. Again, the Committee Defendants response did not conform with the Court's motion practice guidelines.

The parties attention is called to the attention of the following with respect to the Court's motion practice guidelines:

The statements shall be non-argumentative and avoid the use of color words or distortions of the record in a party's favor. Conclusory, speculative, or conjectural statements in support of a position shall be avoided. Hearsay statements and other inadmissible evidence cannot be considered.

If the Committee Defendants chose to refile their motion, the Statement of Material Facts must be concise and should not exceed more than 25-30 paragraphs. The response must be direct and concise and not argumentative.

SO ORDERED.

Dated: October 4, 2006

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, October 4, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160